



Legal Fact Sheet for Connecticut Food Donation: Date Labeling Laws – April 2016

Date labels are the dates on food packaging that are accompanied by phrases such as “use by,” “best before,” “sell by,” “enjoy by,” and “expires on.” Date labels can lead to food waste because they are misleading to consumers and result in safe, wholesome food being needlessly thrown away.

Federal Law on Date Labels

There currently is no federal law regulating date labels.¹ Congress has, however, passed legislation delegating general authority to the FDA and the USDA to ensure food safety and protect consumers from deceptive or misleading food labeling.² Unfortunately, the FDA and the USDA have not interpreted this authority to allow them to regulate date labels, thus:

- The FDA does not require date labels on foods, other than infant formula.³
- The USDA does not require date labels on foods under its purview, including meats, poultry, and egg products.⁴ If, however, USDA-regulated foods are dated, either as required under state law (see below) or voluntarily, they must include: (1) a day and month (and year for frozen or shelf-stable products) and (2) an explanatory phrase, such as “sell by” or “use before.”⁵

Connecticut State Law on Date Labels

Because federal law is so limited, states have broad discretion to regulate date labels. As a result, inconsistent date labeling laws exist across the country.⁶ What has been consistent, however, is food manufacturers’ practice of basing these dates on optimal food quality and freshness, not on food safety.⁷ Despite this fact, many consumers continue to believe date labels are related to food safety.⁸ However, no link has been shown between eating food after its labeled date and foodborne illness.⁹

Connecticut state law requires date labels only on dairy products.¹⁰ Dairy products such as milk, cream, yogurt, soft cheese, cream cheese, and sour cream must be marked with a last sale date.¹¹ The last sale date should be shown in contrasting color from the background packaging and must use the language “Sell by,” “Last sale date,” or “Must be sold by.”¹² Dairy products that are not packaged and heat-treated for storage at room-temperature must also display the words “Keep Refrigerated.”¹³ Dairy products that are packaged and heat-treated for storage at room-temperature must display the words “Keep Refrigerated After Opening.”¹⁴ Connecticut law does not restrict the sale or donation of dairy products after the last sale date.

Connecticut has also adopted the voluntary version of the Uniform Open Dating Regulation, model regulations adopted by the National Conference on Weights and Measurements and published by the National Institute of Standards and Technology (NIST).¹⁵ Under the voluntary version of the model regulations, manufacturers are not required to place date labels on food products in Connecticut, aside from the dairy products identified above. However, when manufacturers use such labels voluntarily, they must conform to the Uniform Regulation, described below.¹⁶

If date labels are used on perishable food items, the Uniform Regulation requires the use of a “Sell by” date, which must allow a reasonable period of time—defined as one-third the shelf-life of the product—to pass following the sale of the product before it spoils or loses value.¹⁷ If a manufacturer chooses to use a “Sell by” label on perishable food items, those items cannot be sold after the passage of the “Sell by” date unless clearly marked as being past-date.¹⁸ If date labels are placed on semi-perishable or long-shelf-life food, the Uniform Regulation requires a “Best if Used by” label.¹⁹ These food items can be sold past-date, as long as the food is wholesome and meets physical quality standards.²⁰

Connecticut law exempts dairy foods that are already required to be marked with a last sale date from the requirements of the Uniform Open Dating Regulation.²¹

Conclusion

In sum, because there is no federal law on date labeling, regulation of these labels has been left largely to the states. Connecticut requires date labels only for dairy products, but does not explicitly prohibit the sale of these items past this date. However, manufacturers that choose to place date labels on other products in Connecticut must follow the Uniform Open Dating Regulation. The voluntary version of the Uniform Regulation requires the use of “Sell by” dates on perishable products and “Best if Used By” dates on semi-perishable and long-shelf-life products. It also requires that perishable products sold after the “Sell by” date be clearly marked as past-date.

¹ See *Food Product Dating*, U.S. DEP’T OF AGRIC. FOOD SAFETY & INSPECTION SERV.,

<http://www.fsis.usda.gov/wps/portal/food-safety-education/get-answers/food-safety-fact-sheets/food-labeling/food-product-dating/food-product-dating> (last visited February 25, 2015).

² 21 U.S.C.A. § 331(b) (2015); 21 U.S.C.A. § 343 (2015); 21 U.S.C.A. § 463(a) (2015); 21 U.S.C.A. § 607(c) (2015); 21 U.S.C.A. § 1043 (2015).

³ *FDA Basics*, FOOD AND DRUG ADMIN., <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm210073.htm> (last updated Jun. 8, 2015); 21 C.F.R. § 107.20 (2012).

⁴ See *supra* note 1. The USDA does, however, require a “pack date” for poultry and a “lot number” or “pack date” for egg products certified by the USDA. HARVARD FOOD LAW & POLICY CLINIC AND NAT’L RES. DEF. COUNCIL, *THE DATING GAME: HOW CONFUSING FOOD DATE LABELS LEAD TO FOOD WASTE IN AMERICA* 11 (2013).

⁵ 9 C.F.R. § 317.8(b)(32)(i) (2013); 9 C.F.R. § 317.8(b)(32)(2) (2013).

⁶ HARVARD FOOD LAW & POLICY CLINIC AND NAT’L RES. DEF. COUNCIL, *supra* note 4, at 14 fig. 4.

⁷ See *id.* at 17.

⁸ *Id.* at 19.

⁹ See *id.* at 19-20.

¹⁰ Conn. Gen. Stat. Ann. § 22-197b (2006).

¹¹ *Id.*

¹² Conn. Agencies Regs. § 22-133-131(c).

¹³ Conn. Agencies Regs. § 22-133-131(c).

¹⁴ Conn. Agencies Regs. § 22-133-131(d).

¹⁵ Conn. Agencies Regs. § 43-8a-1.

¹⁶ *Id.* at 149.

¹⁷ *Id.* at 153-54.

¹⁸ *Id.* at 154.

¹⁹ *Id.* at 155.

²⁰ *Id.* Nat’l Inst. of Standards & Tech., U.S. Dep’t of Commerce, Handbook 130: Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality 155 (2013), available at <http://www.nist.gov/pml/wmd/pubs/upload/hb130-13-final.pdf>.

²¹ Conn. Agencies Regs. § 43-8a-1.